

Barry H. Epstein (State Bar No. 104402)
Julie A. Coldicott (State Bar No. 201186)
FITZGERALD, ABBOTT & BEARDSLEY LLP
1221 Broadway, 21st Floor
Oakland, CA 94612
Telephone: (510) 451-3300
Facsimile: (510) 451-1527

Attorneys for Applicant
EM-One Power Station LLC

STATE OF CALIFORNIA

Energy Resources Conservation And Development Commission

In the Matter of:)	Docket No. 00-AFC-3
)	
Application for Certification)	NOTICE OF APPLICANT'S
for the EM-One Power Station's)	OBJECTIONS TO AND
NUEVA AZALEA POWER PLANT PROJECT)	INABILITY TO COMPLY WITH
(Sunlaw Energy Corp.))	INTERVENOR CBE'S FIRST SET
)	OF DATA REQUESTS AND
)	SUPPLEMENT TO FIRST
)	SET OF DATA REQUESTS
)	

Applicant EM-One Power Station LLC ("Applicant") hereby timely submits its Notice of Objections to and Inability to Comply with Intervenor CBE's First Set of Data Requests and Supplement to First Set of Data Requests pursuant to 20 Cal. Code Reg. § 1716(f). Subsection 1716(f) provides that a party has 10 days after receipt of a request for information to inform the requesting party and the Committee that it is unable to provide or objects to providing the requested information. Applicant received CBE's First Set of Data Requests and Supplement to First Set of Data Requests on October 25, 2000 and October 31, 2000 respectively.

GENERAL OBJECTIONS

The following general objections apply to all of CBE's Requests and are in addition to any objection to or inability to comply with a specific Request set forth below.

1. Applicant objects to each of CBE's Requests to the extent that such Request seeks data that is not reasonably available to Applicant.
2. Applicant objects to each of CBE's Requests that seeks data within an arbitrary six-mile radius of the proposed project site (or that uses the term "vicinity" to mean a six-mile radius of the site) for use in impact analysis. The appropriate geographic area of impact analysis should be determined based on the particular circumstances of the impact under review.

SPECIFIC OBJECTIONS AND INABILITY TO COMPLY

Technical Area: Air Quality

23. *Please provide (in a table or other suitable format) a list, with addresses, of all stationary sources of PM10 emissions within a six-mile radius of the proposed project site. For each site, provide the annual emissions of PM10 and list all feasible control measures that could reduce PM10 emissions.*

Applicant objects to this Request on the grounds that the requested data is not relevant to the application proceeding and is not reasonably necessary for the Commission to make a decision on the Application. Applicant notes that virtually every residential, commercial, and industrial structure is a stationary source of PM10. The emissions of other specific PM10 sources are not relevant to the proceeding. In addition, Applicant would be unable to comply with much of the Request since Applicant lacks any means of obtaining PM10 emission data and data concerning potential PM10 control measures from many if not all such other sources. Applicant also objects to this Request to the extent that it seeks confidential business information related to existing or potential sources of ERCs. In addition, Applicant notes that, to the extent that CBE seeks information regarding *permitted* stationary sources, such information is publicly available to CBE.

Notwithstanding the above objections and inability to comply, Applicant will undertake reasonable efforts to respond in part to this Request.

33. *Please provide a cumulative impacts analysis of air quality for the area within a six-mile radius of the proposed site.*

Applicant will be unable to complete the cumulative air quality impact analysis within the time frame requested. Applicant first began seeking information from the SCAQMD and the CEC staff of other existing and potential emissions sources in May 2000 in order to undertake this analysis. It received some information from these agencies on November 3, 2000 but has not yet determined if that information is sufficient to allow Applicant to conduct the analysis. Applicant hopes to be able to complete the cumulative air impact analysis by approximately December 6, 2000.

34. *Please provide a table listing all proposed projects that are now under discussion by any governmental or private party including their addresses or cross-street locations, within a six-mile radius of the proposed site, that will be a source of any of the following pollutants: PM10, CO, NO2, NOx and SO2. Include the estimated annual emissions of PM10, CO, NO2, NOx and SO2 for each site.*

Applicant objects to this request on the grounds that some of the requested data is not relevant to the application proceeding or reasonably necessary for the Commission to make a decision on the application. Only probable future projects, as that term is defined by statute, regulation and case law, are used in the CEQA cumulative impacts analysis. Not all "proposed projects ... under discussion by any governmental or private party" are considered probable future projects for purposes of CEQA. Accordingly, Applicant will provide a limited response to this Request.

38. *Please list and provide documentation to describe all projects within a 6-block radius of the J.B. Hunt site that are now under discussion by any governmental or private party, which would involve more than one truck trip per day.*

Applicant objects to this request on the grounds that some of the requested data is not relevant to the application proceeding or reasonably necessary for the Commission to make a decision on the application. Only probable future projects, as that term is defined by statute, regulation and case law, are used in the CEQA cumulative impacts analysis. Not all "projects ... that are now under discussion by any governmental or private party" are considered probable future projects for purposes of CEQA. Accordingly, Applicant will provide a limited response to this Request.

Technical Area: Alternatives

50. *Please provide a copy of the business plan referred to in the discussion of Site C in the AFC (p. 3- 72).*

Applicant objects to this Request on the grounds that the requested data is not relevant to the application proceeding or reasonably necessary for the Commission to make a decision on the application and on the grounds that the Applicant's business plan contains confidential business information.

Technical Area: Facility Description and Location

55. *Provide documentation of the applicant's ownership interest in the site.*

Applicant objects to this Request on the grounds that the requested data is not relevant to the application proceeding or reasonably necessary for the Commission to make a decision on the application and on the grounds that the only existing direct documentation of Applicant's ownership interest in the project site contains confidential business information and is subject to a confidentiality agreement that prohibits its disclosure.

Technical Area: Public Health

68. *Please provide a list, with addressees, of all "sensitive receptors" in the area in a six-mile radius from the proposed site, including (but not limited to):*

- *elementary schools*
- *middle schools*
- *high schools*
- *nursing or convalescent homes*
- *hospitals*
- *public parks and outdoor recreation facilities*
- *housing units designated for persons over the age of 55*
- *public housing projects*

Applicant objects to this Request on the grounds that the requested data is not reasonably available to the Applicant. In addition, Applicant objects to this Request on the grounds that identification of specific sensitive receptors is not relevant to the application proceeding or reasonably necessary for the Commission to make a decision on the application for the following reason: For purposes of public health risk assessment, Applicant is willing to stipulate to an assumption that there is a sensitive receptor located at the maximum point of impact for each air pollutant from the project.

69. *Please provide a list, with addresses, of all schools currently planned to be built by 2005 within a six-mile radius of the proposed site.*

Applicant objects to this Request on the grounds that the requested data is not relevant to the application proceeding or reasonably necessary for the Commission to make a decision on the application for the reason set forth in the objection to Request No. 68.

74. *Please provide a table that quantifies the amount and type of emissions from these 230 trucks on annual basis.*

Applicant objects to this Request on the grounds that the requested data is not relevant to the application proceeding or reasonably necessary for the Commission to make a decision on the application. Notwithstanding this objection, Applicant will provide a limited response to this Request.

Technical Area: Waste Management

94. *Please identify the person(s) responsible for the on-site management of the soil vapor extraction system, giving their names, employers, and job titles.*

Applicant objects to this Request on the grounds that the requested data is not relevant to the application proceeding or reasonably necessary for the Commission to make a decision on the application. The Applicant is not responsible for conducting the vapor extraction project and the vapor extraction project is not part of the Nueva Azalea project. Notwithstanding this objection, Applicant will take reasonable steps to determine whether some responsive data, beyond that already supplied to CBE, can be made available.

95. *Please identify the person(s) and/or entit(ies) that are financially responsible for the installation, maintenance, and/or control of the soil vapor extraction system.*

Applicant objects to this Request on the grounds that the requested data is not relevant to the application proceeding or reasonably necessary for the Commission to make a decision on the application. The Applicant is not responsible for conducting the vapor extraction project and the vapor extraction project is not part of the Nueva Azalea project. Applicant also objects to this Request on the grounds that some of the requested data may be subject to a confidentiality agreement that prohibits its disclosure.

97. *Please estimate, and provide documents supporting the estimate, the percentage of toxics present in diesel exhaust in air used in the power plant's processes that will be removed prior to its release from the plant's stacks.*

Applicant objects to this Request on the grounds that the data needed to provide the requested estimate is not reasonably available to Applicant. Applicant is unable to respond to this Request. Applicant does not know and does not believe it is possible to know or even to reasonably estimate the quantity of toxics in the plant intake air that will be attributable to diesel exhaust.

98. *Please present a table with quantitative estimates of the concentrations of each toxic constituent of diesel exhaust in the air used in the plant's processes, both before and after the asserted removal of such toxics from the air.*

Applicant objects to this Request on the grounds that some of the requested data is not reasonably available to Applicant and on the grounds that the requested data is not relevant to the application proceeding or reasonably necessary for the Commission to make a decision on the application. Applicant does not have and cannot reasonably obtain the requested data as to all toxic constituents of diesel exhaust. Notwithstanding this objection, Applicant will provide a limited response to the Request from data reasonably available to it.

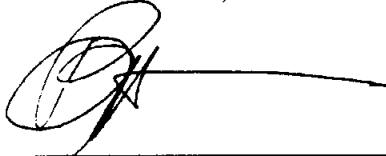
Technical Area: Traffic and Transportation

T-1. *Please provide documentation showing the average number of daily truck trips to and from the J.B. Hunt facility, by month, for each year from 1996 to date.*

Applicant objects to this Request on the grounds that the requested data is not reasonably available to Applicant and is not necessary for the Commission to make a decision on the application. Notwithstanding this objection, Applicant will be able to provide monthly data for a representative year.

Dated: November 3, 2000

FITZGERALD, ABBOTT & BEARDSLEY LLP



Barry H. Epstein
Attorneys for Applicant
EM-One Power Station LCC